

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.115 of 2007

Decided on: April 2, 2007

Smt. Bashir Bibi and another

.....Appellants.

VERSUS

Ataha Mohammad and others

.....Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellants : Mr. T.S. Chauhan, Advocate.

For the Respondents : M/s Bhuvnesh Sharma & Ramakant Sharma, Advocates.

None for respondent No.2.

Mr. K.D. Sood, Advocate, for respondent No.3.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Appellants-plaintiffs filed a suit claiming that they were owners in possession of the suit property, which, at one point of time, was owned and possessed by one Sadik Bibi, their mother-in-law, and that said Sadik Bibi having executed a Will in their favour they had acquired its ownership.

3. Ataha Mohammad, respondent/defendant No.1, contested the suit claiming that he being the son of the deceased, the latter could not have willed away her entire property without obtaining his consent. His plea was that under the Muslim Law the deceased could have willed away her estate to the extent of 1/3rd part of it and in case she wanted to Will away the rest of the 2/3rd or any part thereof, his consent was required.

Whether the reporters of the local papers may be allowed to see the Judgment?

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4. Appellants-plaintiffs took the plea that defendant No.1 Ataha Mohammad had been given in adoption and so he ceased to be the son of the testatrix and, as such, the question of obtaining his consent did not arise.

5. The two Courts below have rejected the plea of the appellants-plaintiffs that defendant No.1 had been give in adoption, holding that no evidence to this effect is there. Learned counsel says that there is testimony of one of the appellants to this effect. Self serving bald statement of a party with respect to adoption cannot be said to be sufficient proof of plea of adoption. Therefore, no fault can be found with the finding of the two Courts below as regards the relationship of defendant/respondent No.1 with the deceased testatrix. No substantial question of law arises. Hence, the appeal is dismissed.

CMP No.186/2007

Infructuous.

April 2, 2007 (sd)

**(Surjit Singh)
Judge.**